IN THE CIRCUIT COURT OF MACON COUNTY, MISSOURI

MARY KATHRYN CROCKER-WYSS a/k/a MARY KATHRYN WYSS	)	
Plaintiff,	)	
v.	)	Case No.: 23MA-CC00020
JOHN W. BRISCOE, *et al.*	)	
Defendants.	)	

PLAINTIFF'S OPPOSITION TO DEFENDANT BRANNON'S MOTION TO DISMISS SECOND AMENDED PETITION

Petitioner Mary Kathryn Crocker-Wyss a/k/a Mary Kay Wyss, through counsel, opposes Defendant Brannon's Motion to Dismiss her Second Amended Petition as follows:

I. Introduction.

Defendant Brannon's Motion to Dismiss recycles his already failed Motion for Judgment on the Pleadings, with a loaded argument falsely asserts that the issue is whether the Court should "expand" the "privity exception" of *Donahue v. Shughart, Thomson and Kilroy, P.C.*, 900 S.W.2d 624, 628-29 (Mo. banc 1995). *Donahue* does not establish a "privity exception" to "expand," but explains how a non-client may have sufficient privity with an attorney's client so as to have the same standing as that client in a lawsuit for professional negligence. "Privity of contract denotes mutual or successive relationship to the same . . . subject-matter." *Public Water Supply Dist. No. 6 of Jackson County v. U.S.*, 66 F.Supp. 66 (W.D. Mo. 1946). As *Donahue* notes, while "the analysis begins with the historical rule requiring privity of contract to maintain an action for professional negligence

. . . the vast majority of modern decisions have favored expanding privity beyond the confines of the attorney-client relationship where the plaintiff was intended to be the beneficiary of the lawyer's retention." *Donahue v. Shughart, Thomson and Kilroy, P.C.*, 900 S.W.2d 624, 627 (Mo. banc 1995). Privity focuses on the *identities* of those effectively possessing mutual or successive relationship to the same rights - here, the right to effective legal services. *Id. Donahue* thus does not create an "exception" to privity so much as it acknowledges privity, which "may be satisfied by establishing as a matter of fact . . . that . . . an attorney-client relationship existed in which the attorney-defendant performed *services specifically intended* by the client *to benefit plaintiff*[]. Id. at 628-29.

Defendant muddies the waters by blending two distinct concepts. Standing pertains to **who** may bring suit, not **what** the plaintiff may present in support of her suit. Defendant Brannon attempts to confuse the Court by blending issues of standing and liability – **who** and **what** – in the same breath, even though the only issue relevant to his Motion to Dismiss is **who**. That is, Defendant Brannon goes beyond the issue of whether Plaintiff may sue at all by arguing that she cannot present evidence as to an intended gift, even though there can be no debate that she was an intended beneficiary of the decedent.

The takeaway from the cases informing the parties' briefs – *Donahue, Johnson, Alberts* and *Fallon* – when read together, is that the naming of a beneficiary in an executed donative[1] instrument is evidence of a client's intent to benefit such *actual beneficiary*,

[1] Defendant uses the word "testamentary" throughout to describe any number of instruments for effecting dispositions at death, even though transfers by inter vivos trust, transfer-on-death designation, beneficiary deed, and anything not by will, are by definition "nontestamentary." §§ 461.001, 461.009, RSMo.

sufficient to give him or her standing, while the absence of an executed donative instrument is not sufficient evidence of intent to benefit an *entirely prospective* beneficiary to give such prospective beneficiary standing. "[A]n intent to benefit is inherent in designating persons as beneficiaries," *Johnson v. Sandler, Balkin, Hellman, & Weinstein, P.C.*, 958 S.W.2d 42, 50 (Mo. App. W.D. 1997), while "undrafted, unexecuted testamentary instruments would invite claims premised on improper speculation regarding the testator's intent" to benefit "prospective beneficiaries." *Alberts v. Turnbull Conway*, P.C., 641 S.W.3d 370, 377 (Mo. App. W.D. 2022). Thus, once a non-client's name appears as a beneficiary in an executed will or will substitute, privity is established. *Id*.

In the instant case, Plaintiff is an *actual*, *identifiable* beneficiary and thus has standing to bring this case for the mishandling of her mother's estate planning to her detriment. Once her standing is established, there is no limit on the **what** she may present to show the basis of her injury, just as there would be no limit on what the decedent could have presented had Defendants injured her with their negligence. *See Johnson v. Sandler, Balkin, Hellman, & Weinstein, P.C.*, 958 S.W.2d at 50-52 (Mo. App. W.D. 1997) (daughters named as trust beneficiaries had standing to sue estate planning attorneys and were thus permitted to present "reasonable inferences" from circumstances outside the four corners of the trust instrument to demonstrate the deceased settlor's intent to benefit the daughters more generously than shown by the literal trust language).

II. Standard for Motion to Dismiss.

In deciding a motion to dismiss, the Court must accept Plaintiff's properly pleaded facts as true. *Murphy v. A.A. Mathews, Div. of C.R.S. Group Engineers, Inc.*, 841 S.W.2d

671, 672 (Mo. banc 1992). Rule 55.05 requires the pleadings of a party to be interpreted liberally and afforded all inferences which are fairly deducible from the facts as stated. *Schimmer v. H.W. Freeman Const. Co.*, 607 S.W.2d 767, 770 (Mo. App. E.D. 1980). A motion to dismiss concedes the truth of all facts well pleaded. *Commercial Bank of St. Louis Co. v. James*, 658 S.W.2d 17, 23 (Mo. banc 1983). "We must give the language its plain and ordinary meaning and interpret it as it fairly appears to have been intended by the pleader." *Burns v. Black & Veatch Architects, Inc.*, 854 S.W.2d 450, 457 (Mo. App. W.D. 1993) (citing *Maddox v. Truman Medical Center, Inc.*, 727 S.W.2d 152, 153 (Mo. App. W.D. 1987). "Even a missing element is not fatal if the element is inferable from the facts pleaded." *Threats v. General Motors Corp.*, 897 S.W.2d 327, 328 (Mo. App. E.D. 1994).

III. Memorandum.

a. A Summary of the Second Amended Petition.

The thrust of the Second Amended Petition is that in carrying out an estate planning engagement for Plaintiff's mother, John Briscoe negligently drafted a beneficiary deed for Plaintiff's benefit, which deed omitted a portion of the legal description to a particular tract (called "the Judy Place") and thereby deprived Plaintiff of an intended gift.

While paying lip service to the principle that all facts alleged in the Petition are to be taken as true, Defendant completely glosses over the allegations that John Briscoe himself initially believed that that entire Judy Place tract was to go to Plaintiff outside probate via said deed, as reflected by the fact that he represented to the probate court that there was no real estate in her mother's probate estate after she died. It was not until nearly a year after her mother's death that Plaintiff learned from the Ralls County Assessor that a portion of the tract was omitted from the deed. John Briscoe learned of the omission from Plaintiff. Only then did he notify the probate court of real estate that needed to be probated due to its failure to pass by deed.

More specifically, nine months before finally including real property as a probate estate asset, John Briscoe had opened the probate estate of the deceased mother in which he represented in the Application for Letters that there was no real property in mother's estate. Seven months on, he filed a Notice of Intent to File a Final Settlement which repeated that there was no real property in her estate, which he claimed was ready to be closed. After subsequently learning of the failure of the entirety of the Judy Place to pass by deed, John Briscoe wrote to the personal representative, "It has recently come to light that an 80 acre parcel of the Judy Place was omitted from Mary Kay's Beneficiary Deed on the Judy Place." A factfinder could find Mr. Briscoe's characterization of the deed as "Mary Kay's Beneficiary Deed on the Judy Place" as itself inculpating, especially in conjunction with his multiple representations to the court that the probate estate contained no real property – which would have been true had the beneficiary deed contained a complete legal description. A factfinder could find that John Briscoe had understood that the deed he drafted was intended to convey the entirety of the "Judy Place" to Plaintiff.

b. Defendant attempts to restrict Plaintiff with the inapplicable "four corners rule."

Defendant attempts to defeat Plaintiff's standing by glossing over **who** she is as an expressly named beneficiary, by arguing that her case must be confined to the "four corners" of the beneficiary deed no matter how wrong it is, even though *Johnson* already shows that the "four corners rule" has no place in a professional negligence action, not even one involving an "unambiguous" document. *Johnson v. Sandler, Balkin, Hellman, & Weinstein, P.C.*, 958 S.W.2d at 50-52.

The "four corners" rule is that extrinsic evidence will not be admitted to contradict an unambiguous donative instrument, when the issue is how the unambiguous document is to be enforced or whether it may be reformed to reflect the donor's alleged actual intent. *First Nat'l Bank of Kansas City v. Hyde*, 363 S.W.2d 647, 653 (Mo.1962). The rule does not exclude extrinsic evidence in suits against the scrivener of an unambiguous document from being sued for negligent draftsmanship. *Johnson v. Sandler, Balkin, Hellman, & Weinstein, P.C.*, 958 S.W.2d at 50-52 ("reasonable inferences" from circumstances outside the four corners of the instrument demonstrated the deceased settlor's intent to benefit plaintiffs). Indeed, the inability to reform an unambiguous document is the very circumstance that would make a malpractice action the remedy for one injured by scrivener negligence![2]

c. The Second Amended Petition states a claim against John Briscoe, and as an expressly named beneficiary, Plaintiff has standing to bring that claim.

Addressing the principle of standing in greater depth, the four commonly recited

[2] The obviation of malpractice lawsuits for faulty drafting of trust instruments is why, around 2005, the legislature enacted § 456.4-415 RSMo. to loosen up the "four corners rule" as it applies to trusts, to permit the reformation of even unambiguous but erroneously drafted trust instruments which do not reflect a settlor's actual intent. *See* 4C Mo. Prac., *Trust Code & Law Manual* § 456.4-415 Author's Comment (2022 ed.) (New statutory ability to reform even unambiguous but erroneously drafted trust instruments under UTC provision § 456.4-415 "obviates the need to sue negligent scriveners in legal malpractice actions.")

elements of a legal malpractice action are: “(1) that an attorney-client relationship existed; (2) that defendant acted negligently or in breach of contract; (3) that such acts were the proximate cause of the plaintiffs’ damages; [and] (4) that but for defendant’s conduct the plaintiffs would have been successful in prosecution of their [underlying] claim.” *Boatright v. Shaw*, 804 S.W.2d 795, 796 (Mo. App. E.D. 1990).

Identifiable intended beneficiaries of an attorney’s engagement satisfy the element of attorney-client relationship thus:

> [T]he first element of a legal malpractice action [i.e attorney-client relationship] may be satisfied by establishing as a matter of fact . . . an attorney-client relationship existed in which the attorney-defendant performed services specifically intended by the client to benefit [non-client] plaintiffs.
>
> As a separate matter, the question of legal duty of attorneys to non-clients will be determined by weighing the[se] factors . . .:
>
> (1) the existence of a specific intent by the client that the purpose of the attorney’s services were to benefit the plaintiffs.
>
> (2) the foreseeability of the harm to the plaintiffs as a result of the attorney’s negligence.
>
> (3) the degree of certainty that the plaintiffs will suffer injury from attorney misconduct.
>
> (4) the closeness of the connection between the attorney’s conduct and the injury.
>
> (5) the policy of preventing future harm.
>
> (6) the burden on the profession of recognizing liability under the circumstances.

Donahue v. Shughart, Thomson and Kilroy, P.C., 900 S.W.2d at 628-29.

As we know, in *Donahue*, the Supreme Court found all criteria satisfied. *Id*. In that case, the decedent client had sent the defendant attorney $150,000 in checks written on his trust account, payable to plaintiffs (who were not trust beneficiaries and who would thus not receive the trust funds unless the checks were cashed before death) with oral instructions to ensure that plaintiffs receive the proceeds at client's death, and to prepare a beneficiary deed to client's home to transfer to one of the plaintiffs a 50% interest in client's home at client's death. *Id*. at 625. Client then sent another $100,000 check payable to one of the plaintiffs with similar instructions to counsel that the funds be distributed at client's death. *Id*. The attorney failed to see to it that the beneficiaries cashed the checks or recorded the beneficiary deed before the client's death, and the checks and deed failed. *Id*. The Supreme Court concluded that "writing the checks and preparing and signing the deed" evinced a "primary purpose . . . to benefit the plaintiffs" and found that "the facts pleaded here are sufficient to assert a breach of a legal duty and to state a cause of action in a lawyer malpractice action" in that "[decedent's] primary purpose was to benefit the plaintiffs and . . . [i]t is clear that plaintiffs cannot be characterized as incidental or indirect beneficiaries." *Id*. at 629.

In *Donahue,* once it found the documents sufficient to reflect the purpose to benefit the plaintiffs, the court went beyond the text of the instruments and looked at the client's oral instructions to determine the attorney's error in the handling of the instruments. *Id*. Obviously if the *Donahue* plaintiffs were able to present evidence of oral instructions, the four corners rule was and is inapplicable. Similarly, in *Johnson v. Sandler, Balkin,* *Hellman, & Weinstein, P.C.*, 958 S.W.2d 42 (Mo. App. W.D. 1997), once the court of appeals found that named remainder beneficiaries had standing by virtue of being named beneficiaries, it then went well beyond the text of the donative instrument – a trust – to determine the nature and extent of their injury. The remainder beneficiaries in that case were allowed to sue the decedent client's estate planning attorneys for failure to employ, or at least to advise of, alternatives which would have protected them from a widow's spousal election. In that case, an attorney had drafted trust amendments that left half of the decedent's trust assets to his three daughters and the other half in a QTIP trust for his second wife for life, remainder to the daughters. *Id*. at 45. After the client died, consistent with the literal unambiguous text of the instrument, the widow exercised a spousal election which allowed her to take the QTIP assets free and clear of trust and which therefore deprived the daughters of their remainder interest in those QTIP assets. *Id.*

The *Johnson* court considered the circumstances surrounding the drafting of the trust and its amendments to determine the decedent client's intent. *Id*. at 46, 50 – 52. Indeed, the *Johnson* court remarked that, even though "there [was] no direct evidence that [decedent] told [defendant attorneys] or anyone else that he specifically intended that the amendments to the trust prepared by [defendants] benefit the appellants," it was "reasonable to infer" the decedent's "intent to benefit his daughters." *Id*. at 50.

Once the *Johnson* court was satisfied as to **who** was allowed to sue, it did not restrict them as to **what** they could present to demonstrate their injury. Rather than assume that the decedent was content with an estate plan that his widow could affect with a spousal election, which is what the "four corners of the documents" would indicate, the *Johnson* court found, among other things that (1) "there is *the reasonable inference* that the use of these forms was initiated by the law firm because, in the attorneys' analysis of [decedent's] estate plan, the forms were deemed advantageous to effectuate [decedent's] intent;" (2) the widow's "statement supports the *reasonable inference* that she was not a party to discussions concerning the amendments . . .;" and (3) "[f]rom the appellants' evidence, it is *reasonable to infer* that [decedent] retained [defendant] firm to handle his estate matters intending to benefit the appellants . . .." *Id.* at 51, 52. That's a lot of analysis outside the four corners of documents.

The cases which Defendants rely on to try to defeat Plaintiff's case do not alter the principles of *Donahue* and *Johnson*. Rather, they focus on **who** in concluding that merely "prospective" beneficiaries of unwritten and unexecuted instruments lack standing to sue. *Alberts v. Turnbull Conway*, P.C., 641 S.W.3d 370 (Mo. App. W.D. 2022), on which Defendant principally relies, involved the failure of an attorney to draft estate planning documents *at all* prior to a client's death.[3] The Court of Appeals distinguished the case before it with *Donahue* and *Johnson* for the simple reason that "[w]here the relevant testamentary documents are never executed (like this case), issues related to the testator's intent are far more tenuous than where (as in *Donahue* and *Johnson*) the testator's intent has been manifested in an executed document," "[b]ecause the lack of an executed testamentary document introduces rampant speculation into the analysis . . .." *Id.* at 375-

[3] The other case Defendants mention as support is *Fallon v. Easley*, 686 S.W.3d 287 (Mo. App. E.D. 2024) which has basically the same facts as *Turnbull* – the "fail[ure] to execute" an "undrafted, unexecuted third amendment to the trust." *Id.* at 292.

76. The *Alberts* court noted that because a client may change his mind and not even execute the documents, it held that "we do not find that a legal duty should be imposed upon attorneys . . . to *prospective* beneficiaries for failure to prepare testamentary instruments that *might have been executed* had they been timely prepared." *Id*. at 378 (italics in original).

The contrast between *Alberts* and this case could hardly be clearer. John Briscoe did in fact draft documents which Margaret Caldwell did in fact sign. He drafted a defective document which would be easy for Margaret Caldwell to mistake as correct because it involved a defective legal description, which by its nature is dense and requires an expert to interpret. We know without a doubt from the executed documents that Margaret Caldwell intended to benefit Plaintiff. This answers the question of **who**.

As for **what**, we can "reasonably infer" from the circumstances that she intended her real estate to avoid probate and for Plaintiff therefore to receive the entirety and not just a portion of the "Judy Place" via beneficiary deed. When viewed together, the following circumstances, which are by no means exhaustive, suggest this as Margaret Caldwell's intent:

- The Beneficiary Deed dated January 22, 2010 and recorded January 26, 2010 as Document No. 2010-47298 with the Ralls County Recorder of Deeds (Exhibit 1 to the First Amended Petition), wherein Margaret Caldwell named Plaintiff Mary Kay Wyss and her sister, Rebecca Caldwell, as transfer-on-death beneficiaries of *the entirety* of the Judy Place, including the 80 acre strip which is the subject of this lawsuit (Petition ¶¶ 13-15);

- The Beneficiary Deed executed and recorded July 3, 2012 with the Ralls County Recorder of Deeds as Document No. 2012-52191 (Exhibit 2 to the First Amended Petition), wherein Margaret Caldwell expressly *revoked* the 2010 Beneficiary Deed to the Judy Place, and named Plaintiff Mary Kay Wyss as sole beneficiary-grantee of the tract of land described therein (Petition ¶¶ 16-17, 19), which John Briscoe understood to be the entirety of the Judy Place as shown by, among other things:
  - The Application for Letters of Administration with Will Annexed in *In the Estate of Margaret B. Caldwell*, Estate No. 20RL-PR00071, filed December 1, 2020, wherein John Briscoe represented that there was no real property in Margaret's estate, reflecting Mr. Briscoe's understanding and expectation that the omitted 80 acres were intended to be included in, and to be conveyed by, the 2012 Beneficiary Deed (Petition ¶¶ 25-26);
  - John Briscoe's subsequent reference to "Mary Kay's Beneficiary Deed on the Judy Place" in his discussion of the "80 acre parcel of the Judy Place was omitted" from that Beneficiary Deed (Petition ¶ 34);
  - John Briscoe's acknowledgement that it could have been "a mistake on my part that one parcel containing 80 acres was omitted from the 2012 Beneficiary Deed, which did in fact revoke the 2010 Beneficiary Deed" – this is significant not only because it is consistent with his omission of real estate from the probate court inventory but also because he links the 2012 Deed directly to the revocation of the 2010 Beneficiary Deed which was to convey the entirety of the Judy Place. (Petition ¶¶ 13-17, 23, 26-27, 34).
- The fact that the 80 acres was not actually identified in the will but passed thereunder only as estate residue, a catch-all for estate odds-and-ends (Petition ¶¶ 23, 29).
- No other real estate of Margaret Caldwell's – and there was a lot of it – passed in any manner other than by beneficiary deed. (Petition ¶¶ 10-13, 26, 29, 30, 35-36).

- Margaret Caldwell had three children: Plaintiff, Mary Kay Wyss; Rebecca Caldwell; and Edmond B. Caldwell, deceased, survived by Teresa Caldwell and his and Teresa's two adult children, Champ and Cannon (Petition ¶¶ 6-7).
    - o Teresa Caldwell received from Margaret a complete tract called the Baker Place outside of probate pursuant to beneficiary deed recorded with the Ralls County Recorder January 10, 2013 as Document #2013-53376 (Petition ¶ 30a);
    - o Rebecca Caldwell received from Margaret a life estate in trust (due to concerns over Rebecca's ability to manage assets) in a complete tract known as the Quinn Place, outside of probate pursuant to beneficiary deed recorded with the Ralls County Recorder July 3, 2012 (the same date as the beneficiary deed revoked her interest in the Judy Place) as Document #2012-52819, remainder to her two children free and clear of trust (Petition ¶ 30b);
- Mary Kay Wyss was the only one who did not get a complete tract by beneficiary deed. Instead, she got only a portion of the Judy Place outside of probate, and had to share its 80-acre frontage with Rebecca and Teresa due to the requirement that it go through probate as part of the estate residue (Petition ¶ 32);
- Because the 80-acre frontage had to pass through probate as mere "residue," Rebecca got an interest in a portion of the Judy Place in fee simple, free and clear of the control of a trustee, something Margaret wanted to avoid as shown by the beneficiary deed that gave Rebecca only a beneficial life interest in the Quinn Place (Petition ¶ 31);
- Margaret Caldwell had long and repeatedly stated before her death that it was her desire to leave the Judy Place to Mary Kay, the Quinn Place to Rebecca, and for Edmond/Teresa to get the Baker Place (Petition ¶ 31)[4].

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[4] Defendant hates this and argues that such evidence is inadmissible to establish standing. But once an executed document shows **who** decedent intended to benefit, it is absolutely admissible to establish **what** benefit was intended. *See Johnson v. Sandler, Balkin, Hellman, & Weinstein, P.C.*, 958 S.W.2d at 50. (decedent's statements of intended benefit

- The error in the "Second Beneficiary Deed" to Plaintiff which omitted a portion of the Judy Place came about this way:
    - o In 1979, John Briscoe prepared for Margaret and her husband a deed to multiple tracts of real estate which included the Judy Place (Petition ¶ 11);
    - o In that 1979 Deed, the Judy Place boundaries were not set out in one continuous description, but were interrupted by descriptions of unrelated parcels, like so (the highlighted text being the Judy Place):

> to-wit: All of the Southeast Quarter (SE-1/4) of the Southeast Quarter (SE-1/4) of Section Eight (8) and the Northeast Quarter (NE-1/4) of the Northeast Quarter (NE-1/4) of Section Seventeen (17) in Township Fifty-four (54), Range Seven (7) West. Also: The Northwest Quarter (NW-1/4) of the Northeast Quarter (NE-1/4) of Section Seventeen (17); and the South 51-1/2 acres of the West Half (W-1/2) of the Southeast Quarter (SE-1/4) of Section Eight (8) being the land set apart to Nancy J. Bear in the division of the estate of George Shaver; and 11-1/2 acres in the Northwest corner of said West Half (W-1/2) of the Southeast Quarter (SE-1/4) of said Section Eight (8) being the land set off to Louisa Rouse in said Division of said George Shaver's Estate all in Township Fifty-four (54), Range Seven (7) West the last described tract being 103 acres, more or less. Also: All of the Southwest Quarter (SW-1/4) of the Southeast Quarter (SE-1/4) and Twenty (20) Acres the West Half (W-1/2) of the Northwest Quarter (NW-1/4) of the Southeast Quarter (SE-1/4) and Thirty (30) acres off the East side of the Southwest Quarter (SW-1/4) being in Section Ten (10), Township Fifty-four (54), Range Seven (7) West except a certain road or gateway along the branch which runs through said tract of land, said roadway being established by long usage. Also: All of the North Half (N-1/2) of the Northwest Quarter (NW-1/4) of Section Sixteen (16), Township Fifty-four (54), North, Range Seven (7) West comprising 80 acres, more or less. Also: the North Half (N-1/2) of the West 130 acres of the Southwest Quarter (SW-1/4) of Section Ten (10), Township Fifty-four (54), Range Seven (7) West contain-

(Petition ¶ 12);

- In the 2010 Beneficiary Deed to the Judy Place, John Briscoe used a different, more modern description that did not include the 1979 Deed's odd references to "land set apart to Nancy J. Bear" and "George Shaver's estate," etc. The area described in the highlighted language from the 2010 Beneficiary Deed corresponds (by color) with the area described in the highlighted language in the 1979 Deed, even though the wording and order are quite different. The orange highlighting pertains to the 80-acre frontage that ultimately got left off the 2012 Beneficiary Deed:

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admissible).

> The North Half (N½) of the Northwest Quarter (NW¼) of Section Sixteen (16), Township Fifty-Four (54) North, Range Seven (7) West; the North Half (N½) of the Northeast Quarter (NE¼) of Section Seventeen (17), Township Fifty-Four (54) North, Range Seven (7) West; all of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section Eight (8), Township Fifty-Four (54) North, Range Seven (7) West; and all of the West Half (W½) of the Southeast Quarter (SE¼) of said Section Eight (8), Township Fifty-Four (54) North, Range Seven (7) West, excepting seventeen (17) acres, more or less, in the Northeast corner of the West Half (W½) of the Southeast Quarter (SE¼) of said Section Eight (8), Township Fifty-Four (54) North, Range Seven (7) West. All of said property being subject to rights-of-way of record.

(Petition ¶ 15);

- The 2012 Beneficiary Deed did not simply re-use the superior description from the 2010 Beneficiary Deed, but reverted back to the awkward description from the 1979 Deed, except that it omitted the description of the 80-acre frontage (the "orange" text), which had lacked continuity in the 1979 Deed. The yellow and green highlighted text from the 2010 Beneficiary Deed corresponds with the yellow and green highlighted text from the 1979 Deed:

> All of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section Eight (8) and the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section Seventeen(17) in Township Fifty-Four (54), Range Seven (7) West. Also: The Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of Section Seventeen (17); and the South 51½ acres of the West Half (W½) of the Southeast Quarter (SE¼) of Section Eight (8) being the land set apart to Nancy J. Bear in the division of the Estate of George Shaver; 11½ acres in the Northwest corner of said West Half (W½) of the Southeast Quarter (SE¼) of said Section Eight (8) being the land set off to Louisa Rouse in said Division of said George Shaver's Estate all in Township Fifty-Four (54), Range Seven (7) West the last described tract being 103 acres, more or less.

(Petition ¶ 19);

- John Briscoe does not work from old drafts of documents to create new ones, because he does not keep document drafts on a computer but deletes them; therefore, he created each deed from scratch (Petition ¶ 21);
- Quite apparently, John Briscoe got a copy of the 1979 Deed from which to create a description of the Judy Place for the 2012 Beneficiary Deed, and neglected to note that an 80-acre frontage (the orange highlighted text) was separated from the entire tract by an unrelated description, and as a result omitted it (Petition ¶ 22).

It is clear from the executed estate planning documents which identify Plaintiff as an intended beneficiary, Plaintiff has standing. *Donahue*, 900 S.W.2d at 628-29; *Johnson*, 958 S.W.2d at 52. The remaining allegations demonstrate Defendants' liability causing Plaintiff's damage, and therefore that the Second Amended Petition states a claim for relief.

IV. Conclusion

WHEREFORE, Plaintiff respectfully prays that this Court deny Defendant Brannon's Motion to Dismiss, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

McDOWELL, RICE, SMITH & BUCHANAN

/s/ Hugh L. Marshall

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of August, 2025, the above and foregoing was filed with and served via the court's electronic filing system with notice to all attorneys of record.

/s/ Hugh L. Marshall